

REMARKS

§112 Rejections

The Examiner rejects claims 1 – 23 under 35 U.S.C. §112, 2nd paragraph for being indefinite. As shown in the attached “Amendments to the Claims,” Applicants amended claims 1, 9, 10, 15, and 19 to address the §112 rejections. Specifically, Applicants amended claims 1, 10, and 19 to replace “the mobility” with “a mobility,” and amended claim 19 to replace “the demand” with “a demand.” Further, Applicants amended claim 9 to replace “said a” with “said,” and amended claim 15 to replace “a predetermined threshold” with “said predetermined threshold.”

Applicants respectfully disagree with the Examiner regarding the objection to “the number” as it appears in claim 19. Claim 19 claims “establishing a preferred set of spreading codes...” and “assigning selected users to at least one spreading code... when a demand for spreading codes exceeds the number of spreading codes in said preferred set.” Applicants note that the claimed set of spreading codes inherently is made up of some number of spreading codes. MPEP 2173.05(e) states that inherent components of recited elements have antecedent basis. Because “the number of spreading codes” is an inherent quality of the claimed “set of spreading codes,” Applicants submit that “the number” satisfies the requirements of §112.

Regarding the §112 rejection of claims 17 and 18, the Examiner asserts that it is improper to use double bracketing for deletion of claim language. Applicants respectfully disagree and direct the Examiner’s attention to MPEP 714(II)(C)(B), which states “for deletion of five or fewer consecutive characters, double brackets may be used.” Because Applicants used double brackets to delete “a” from claims 17 and 18, the previously proposed amendments

comply with the current MPEP rules. Applicants note that the same logic applies to currently amended claims 9 and 15.

For at least these reasons, Applicants submit that claims 1 – 23 satisfy all §112 and antecedent requirements. Therefore, Applicants request that the Examiner reconsider and withdraw the rejections.

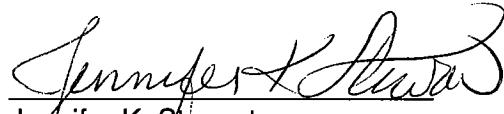
§103 Rejections

The Examiner also rejects claims 1, 10, and 19 under §103 as unpatentable over Wallentin (US6347091) in view of Kim (US6512753), and claims 2, 11, and 20 under §103 over Wallentin, Kim, and Kansakoski (US6377813). However, Applicants note that Wallentin is not available as a reference under §103. Wallentin was filed in the USPTO on 6 November 1998 as a CIP of Application Serial No. 09/099773 filed on 19 June 1998, and issued on 12 February 2002. The present application was filed in the USPTO on 8 January 2001. As such, based solely on the dates, Wallentin represents a potential §102(e) reference. When the present application was filed with the USPTO, Wallentin was assigned to Telefonaktiebolaget LM Ericsson, and the present application was assigned to Ericsson, Inc. Applicants note that Telefonaktiebolaget L.M. Ericsson owns 100% of Ericsson Inc. As such, Applicants hereby state that the pending application and Wallentin were, at the time the invention described in the pending application was made, commonly owned. Therefore, under §103(c), Wallentin does not qualify as prior art for an obviousness rejection under §103 against the pending claims. For at least this reason, the §103 rejections cited against claims 1, 2, 10, 11, 19, and 20 must be withdrawn.

In light of the above remarks and the enclosed amendments, Applicants submit that claims 1 – 23 stand in condition for allowance. As such, Applicants request that the Examiner withdraw all rejections and issue a notice of allowance. If any issues remain, Applicants request that the Examiner call the undersigned so that any such issues may be expeditiously addressed.

Respectfully submitted,

COATS & BENNETT, P.L.L.C.



Jennifer K. Stewart
Registration No.: 53,639

P.O. Box 5
Raleigh, NC 27602
Telephone: (919) 854-1844
Facsimile: (919) 854-2084

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